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| <b>TAMERA JACKSON</b>                                | ) |                      |
| Claimant   | ) |                      |
| VS.  | ) |                      |
|  | ) | Docket No. 1,046,584 |
| <b>ALDERSGATE VILLAGE</b>                            | ) |                      |
| Respondent   | ) |                      |
| AND  | ) |                      |
|  | ) |                      |
| <b>KANSAS ASSOCIATION OF HOMES FOR<br/>THE AGING</b> | ) |                      |
| Insurance Carrier                                    | ) |                      |

In the Award, the ALJ approved claimant's attorney fees pursuant to claimant's contract of employment with her attorney and K.S.A. 44-536. The Attorney and Client Agreement was filed with the Workers Compensation Division on July 17, 2009. The Application For Review By The Workers Compensation Board of Appeals (Application) was filed on June 22, 2011, disputing the amount of permanent partial disability compensation due and owing.

On June 28, 2011, claimant's attorney, George H. Pearson, filed his Motion To Withdraw And Request For Hearing To Enforce Attorney's Lien (Motion). Attached to the Motion was a letter from claimant to her attorney dated June 23, 2011, terminating the attorney-client relationship. The Motion explained that claimant, rather than disputing the amount of compensation awarded, was disputing the amount of fees and expenses allowed Mr. Pearson in the Award. The Motion requested a Court Order for 25 percent of all the compensation recovered pursuant to the Award, plus expenses of \$2,489.12 pursuant to the contract. Attached to the Motion was a detailed list of expenses associated with the litigation of this matter. In a letter to the ALJ dated June 24, 2011, Mr. Pearson explained that the appeal was based solely on the issue of the amount of compensation due and owing. Additionally, in the Motion, it was further explained that claimant's objection was to the amount of money Mr. Pearson was to receive, with claimant quoted as saying "what do I need you for now that the Judge gave me the money."

The Board must, therefore, determine whether the issues raised in this matter should be bifurcated to remand to the ALJ for a hearing and further orders on the questions concerning assessment of attorneys fees and on the Motion To Withdraw.

### **FINDINGS OF FACT**

It is apparent that a dispute has arisen between this claimant and her attorney, Mr. Pearson. The dispute involves not only the amount of Mr. Pearson's fees and expenses, but also his ability or inability to continue as claimant's attorney. Neither the detailed dispute regarding the expenses and fees claimed nor the Motion have been presented to or determined by the ALJ.

### **PRINCIPLES OF LAW AND ANALYSIS**

There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge. The board shall be within the division of workers compensation of the department of labor and all budgeting, personnel, purchasing and related management functions of the board shall be administered under the supervision and direction of the secretary of labor. The board shall consist of five members who shall be appointed by the secretary in accordance with this section and who shall each serve for a term of four

years, except as provided for the first members appointed to the board under subsection (f).<sup>1</sup>

The Board is not a court of original jurisdiction. Its jurisdiction is limited to determining appeals of issues presented to and decided by workers compensation administrative law judges. The Board's review is based upon the same record as was considered by the ALJ. The Board does not listen to nor consider new evidence or testimony. Because the Board is limited statutorily to the evidence presented to and the resulting determinations of the administrative law judge, the Board does not have the jurisdiction to consider the current disputes raised between claimant and Mr. Pearson, her attorney. These contractual disputes sit first with the ALJ.

K.S.A. 2010 Supp. 44-511(i)(1) states:

Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges. All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. Review by the board shall be a prerequisite to judicial review as provided for in K.S.A. 44-556 and amendments thereto. On any such review, the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings. The orders of the board under this subsection shall be issued within 30 days from the date arguments were presented by the parties.

The Board is authorized to remand any matter to the ALJ for further proceedings, when deemed necessary. In this instance, certain matters must be remanded to the ALJ for a hearing and further orders on claimant's objection to the fees and expenses claimed and the Motion To Withdraw.

K.S.A. 44-536(h) states:

Any and all disputes regarding attorney fees, whether such disputes relate to which of one or more attorneys represents the claimant or claimants or is entitled to the attorney fees, or a division of attorney fees where the claimant or claimants are or have been represented by more than one attorney, or any other disputes concerning attorney fees or contracts for attorney fees, shall be heard and

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<sup>1</sup> K.S.A. 2011 Session Laws 44-555c(a).

determined by the administrative law judge, after reasonable notice to all interested parties and attorneys.

Therefore, the matters concerning attorney fees and the request for withdrawal by claimant's attorney will be remanded to the ALJ pursuant to K.S.A. 2010 Supp. 44-551(i)(1) and K.S.A. 44-536(h) for a hearing and determination of those issues. The Board does not retain jurisdiction of those issues. However, as the original Application For Review By The Workers Compensation Board of Appeals lists as an issue the amount of permanent partial disability compensation due and owing, the Board will retain jurisdiction of that issue.

#### **CONCLUSIONS**

Having reviewed the entire evidentiary file contained herein, the Board finds the dispute between claimant and her attorney should be remanded to the ALJ for a determination of the Motion To Withdraw And Request For Hearing To Enforce Attorney's Lien. The issue regarding the amount of permanent partial disability compensation due and owing remains with the Board.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Motion To Withdraw And Request For Hearing To Enforce Attorney's Lien should be remanded to the ALJ for a hearing and determination of the disputes between claimant and her attorney, George H. Pearson. The Board does not retain jurisdiction of those issues. The dispute regarding the amount of permanent partial disability compensation due and owing remains with the Board for future determination.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 2011.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Tamera Jackson, 2000 SW Adams, Topeka, KS 66605  
George H. Pearson, Attorney for Claimant  
Michael L. Entz, Attorney for Respondent and its Insurance Carrier  
Rebecca A. Sanders, Administrative Law Judge